UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KINGMAN HOSPITAL, INC. d/b/a
KINGMAN REGIONAL MEDICAL CENTER

and **Case 28-CA-119729**

SCHON HAGER, an Individual

RESPONDENT'S ANSWERING BRIEF IN RESPONSE TO COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

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RESPONDENT'S ANSWERING BRIEF TO GENERAL COUNSEL'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

Respondent Kingman Hospital, Inc. d/b/a Kingman Regional Medical Center ("Respondent" or "KRMC") submits this brief answering Counsel for the General Counsel's exceptions to the decision of the Administrative Law Judge, Melissa M. Olivero ("ALJ"), dated February 20, 2015 ("ALJ Decision") filed on behalf of the General Counsel. The General Counsel took exception to the ALJ's findings asserting that the ALJ erred by: (1) failing to find that Schon Hager engaged in protected concerted activity for the mutual aid or protection; and (2) failing to find that Respondent violated the Act by terminating Hager because she engaged in protected concerted activity. As discussed in more detail herein, the General Counsel's exceptions are unsupported by the record and controlling legal authorities, and the ALJ's decision, therefore must be affirmed.

I. INTRODUCTION[1]

Section 7 of the Act protects employees who engage in "concerted" activity "for the purpose of . . . mutual aid or protection," and Section 8(a)(1) makes it unlawful for an employer to "interfere with, restrain, or coerce" employees in the exercise of their right to engage in such activity. In this case, the Board must address two questions. First, did Hager engage in "concerted" activity when she made comments to a coworker (Daryl Redman) about her demotion from a supervisory position and opinions about her supervisor, when Hager had no object of initiating or inducing group action? Second, was Hager's conversation for the "purpose" of "mutual aid or protection" when her purpose was to protect herself alone and she did not seek Redman's assistance?

[1] ALJD __:__ refers to page followed by line or line numbers of the ALJ's decision in JD-08-15 (Feb. 20, 2015); G.C. Ex. __ refers to General Counsel exhibit followed by exhibit number; R. Ex. __ refers to Respondent exhibit followed by exhibit number; and Tr. __ refers to the page number of the transcript of the ULP hearing.

The ALJ correctly answered both questions in the negative. *Meyers Industries II* sets forth the standard governing "concerted activity." To prove under *Meyers* that a conversation was "concerted activity," the General Counsel must show that it "'was engaged in with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of employees."' The ALJ correctly held that the General Counsel did not make such a showing in this case. Similarly, the record evidence shows that Hager did not have a "purpose" that involved "mutual aid or protection." The ALJ held that "Hager's conversations dealt with Hager's personal opinions regarding her discipline, [her supervisor's] management style, and other subjects of interest only to Hager. As such, I do not find that Hager engaged in conduct for the purpose of mutual aid or protection repeatedly discussing her opinions with Redman." [ALJD at 23:3-4.]

The General Counsel argues here, as he did in his post hearing brief, that Hager's comments to Redman were "inherently concerted." The ALJ rejected the General Counsel's argument stating that "[w]hile such discussions are protected, there is no authority for the proposition that they are automatically deemed concerted without going through the analysis elucidated in *Fresh & Easy Neighborhood Market*." [ALJD at 21:5-10.] The ALJ was correct. There is no authority for extending the "inherently concerted" doctrine to this case. Indeed, doing so would eradicate the legal test governing "concerted activity" determinations set forth in *Meyers* and *Fresh & Easy Neighborhood Market* and would have the practical effect of automatically turning all subjects of discussion into "concerted" activity without regard to whether anyone had a group-action object or whether there was any link to the workplace or employees' interests as employees.

In summary, the ALJ correctly found that the instant case does not involve activity protected under Section 7, which means Hager's discharge was lawful under Section 8(a)(1). Accordingly, the ALJ's findings that Hager did not engage in concerted activities and that her discharge, therefore, did not violate the Act should be affirmed.

II. FACTS

KRMC is a regional hospital that provides inpatient and outpatient care. KRMC's main hospital building sits on its campus in Kingman, Arizona with other buildings, including the Medical Professional Center. KRMC also has an Imaging Center that is approximately one (1) block from the main hospital building, which provides imaging services including x-rays, computerized tomography (CT) scans, MRIs and mammograms. [ALJD at 2:24-26.]

Hager was an "employee" under the Act for a brief two-week period in December 2013. Prior to that time, Hager was KRMC's Imaging Center Supervisor and an undisputed Section 2(11) supervisor.[2]

Hager was removed as the Imaging Center Supervisor on December 6, 2013, due to chronic and documented issues with her performance as a Supervisor. [G.C. Ex. 7(a).] KRMC could have discharged Hager at that time but chose to offer her a position as a CT Technologist in the hospital so that she could continue her employment with KRMC. At the time of her demotion, Hager was given a final written warning and placed on a performance improvement plan. Hager accepted the CT Technologist position under the conditions set by KRMC in the final written warning and performance improvement plan. KRMC made it clear to Hager that if she violated those conditions and failed to improve her performance, she would be subject to immediate discipline, including termination.

Approximately two weeks after she was demoted, KRMC received a complaint from one of Hager's co-workers, Darryl Redman, that Hager was belittling him in front of other co-workers and was making his work environment intolerable by her constant griping about her personal issues. [Tr. at 930:4-931:5.] On December 20, 2013, Hager's supervisors, Lisa Noyes, Imaging Department Director, and Jenny Campbell, Imaging Department Manager, interviewed Redman regarding his concerns about Hager. [Tr. at 931:6-17.] At that time, Redman told

[2] Hager was promoted to the Imaging Center Supervisor position on September 12, 2011, and assumed the day-to-day responsibilities of that position in later 2011/early 2012. [Tr. at 904:2-17.]

Noyes and Campbell that he could not tolerate Hager's constant personal griping and criticisms of him and that he wanted Hager to stop bothering him. [Tr. at 144:12-145:21, 931:18-25.] Following that meeting, Noyes, Campbell, and Redman met with Jason Hembree, Human Resources Generalist, to discuss the situation. [Tr. at 932:9-22.] During that meeting, Redman provided the same information to Hembree that he had provided to Noyes and Campbell. [Tr. at 145:22-146:17, 932:9-22.] Redman was asked and subsequently provided a two-page handwritten statement detailing the complaints and issues he had with respect to Hager. [Tr. at 933:5-10; R. Ex. 22.]

Following their meeting with Redman, Noyes, Campbell, and Hembree discussed the matter further. [Tr. at 932:1-5, 934:19-935:1.] Finding Redman credible, Noyes, Campbell, and Hembree decided that Hager's conduct warranted her discharge given that she was still on a final written warning and performance improvement plan. [Tr. at 106:12-107:1, 109:6-19, 932:24-933:4, 935:2-13.] Noyes testified that Hager had been provided multiple opportunities to correct her behavior, both formal and informal, and that the final written warning had been her last chance to continue her employment with KRMC, and she violated that opportunity. [Tr. at 146:18-147-14; G.C. Ex. 7(a).] The fact that Hager was on the final written warning at the time was a considerable factor and "weighed heavily" in the decision to terminate Hager. [Tr. at 147:22-150:7.]

Noyes, Campbell, and Hembree met with Hager to discuss the matter when she arrived for her assigned work shift on December 20, 2013. [Tr. at 935:14-18.] Pursuant to her standard practice, Noyes, with Campbell's assistance, prepared the discharge notice prior to the meeting with Hager. [Tr. at 108:11-109-19, 139:3-140:10; G.C. Ex. 8.] During their meeting, Noyes told Hager that she had received a complaint about Hager disrupting another employee's work environment and since she was still on a final written warning and performance improvement plan, KRMC had decided to terminate her employment. [Tr. at 117:19-118:2, 935:19-23.]

Hager testified at the hearing that she only discussed her demotion with Redman one time, the night before her termination. [Tr. at 660:4-661:21.] That conversation, according to

Hager, lasted thirty minutes and she simply gave Redman a "rundown" of her demotion after he asked her "what happened." [*Id.*] Hager further testified that she simply gave Redman her "personal account" of what happened and that she did not make any negative statement about the issue to Mr. Redman. [ALJD at 13 at fn. 29; Tr. at 866:2-19.]

Shortly after Hager was terminated, KRMC learned that Hager had failed to obtain the required licenses and approvals for a self-referred mammogram program that she supervised at the Imaging Center. [Tr. at 936:17-19.] In December 2013, Perry Kepler, ARRA Inspector, contacted Campbell and notified her that an anonymous complaint had been filed against KRMC claiming that KRMC was performing self-referred mammograms without a license. [RT 948:1-7.] Campbell was surprised by that statement and told him KRMC would look into the issue. [Tr. at 948:8-949:1.]

Campbell and Noyes immediately began an investigation into the issue raised by Inspector Kepler. [Tr. at 949:2-973:2.] During that investigation, Campbell and Noyes discovered that Hager had established the self-referred program and protocols in early 2013 and had notified staff at the Imaging Center that they could perform self-referred mammograms. [R. Ex. 17, 18.]

The evidence shows, however, that Hager never submitted the required paperwork and/or license application to allow KRMC to become certified to perform self-referred mammograms. [Tr. at 949:2-973:2.] It was Hager's responsibility as the Imaging Center Supervisor to ensure that all the necessary policies and licenses were in place to allow KRMC to perform self-referred mammograms. [Tr. at 937:15-939:13; 971:2-6; R. Ex. 23.] Not only did Hager fail to implement the necessary policies and procedures, she misled KRMC into believing that she had taken the steps necessary to obtain the proper authorization for KRMC to perform self-referred mammograms. Specifically, in June 2013, Hager sent an email to Campbell and other KRMC management staff explaining the guidelines for handling self-referred mammograms. [Tr. at 967:20-970:16.]

During the course of its investigation, KRMC determined that approximately 20 self-referred mammograms had been performed at the Imaging Center in 2012 and 2013 without the requisite license. [Tr. at 959:12-18; R. Ex. 29.] KRMC reported its findings to the ARRA in February 2013. [R. Ex. 32.] As a direct result of Hager's actions, KRMC was required to shut down its mammogram screening for approximately a day-and-a-half and was assessed a $2,000 penalty by the State of Arizona. [Tr. at 972:11-975:8.] Additionally, Hager's action risked patient safety and exposed KRMC and employees who performed self-referred mammograms pursuant to Hager's authorization to having their professional license revoked by the State of Arizona. [Tr. at 972:11-973:2.]

Hager's actions were exceedingly serious. Campbell testified that KRMC would have terminated Hager's employment if the issues related to the self-referred mammogram program that Hager implemented would have been known to KRMC while she was still employed. [RT at 975:1-8.][3]

III. THE ALJ'S DECISION

The ALJ determined that Hager did not engage in concerted activity for the mutual aid protection and therefore dismissed the allegation that Hager's discharge violated Section 8(a)(1) of the Act. According to the ALJ, "Hager's discussions with Redman did not mention any sort of group concern or action. Instead, Hager spoke only of her own discipline and performance improvement plan, which did not implicate other employees." [ALJD at 20:35-68.]

The ALJ rejected the General Counsel's argument that Hager's comments to Redman were inherently concerted. The ALJ held that "[w]hile such discussions are protected, there is no authority for the proposition that they automatically deemed concerted without going through the

[3] The importance of this fact should not be missed given that the evidence shows that the "anonymous" complaint filed against KRMC regarding the self-referred program was most likely done by Calderon, with Hager's full support. In fact, Calderon sent a draft copy of the Complaint to Hager while she was still employed with KRMC. The text messages exchanged between Hager and Calderon show that the Complaint was being filed in order to retaliate against Noyes, Campbell and others at KRMC.

analysis in *Fresh & Easy Neighborhood Market*." [ALJD at 21:1-10.] The ALJ explained that "whether an employee's activity is concerted depends on the manner in which the employee's actions may be linked to those of his coworkers. *Citing Fresh & Easy Neighborhood Market*, 381 NLRB No. 12, slip op. at 3. The ALJ then found that "in this case, Hager did not seek any sort of support from Redman. Instead, she was venting personal concerns regarding discipline given to her and her opinion of management. The General Counsel has not shown how Hager's concerns were either shared by her coworkers or could somehow affect the interests of Redman or others as employees. Therefore, I find *Fresh & Easy Neighborhood Market* factually distinguishable from the instant case." [ALJD at 2:34-39.]

The ALJ also found that Hager's comments to Redman were not undertaken for "employees' mutual aid or protection." [ALJD at 2:36-37.] The ALJ held that Hager's comments to Redman "did not involve topics that inure to the benefit of all employees, such as safety, non-discriminatory hiring practices, or the protection of another employees' job. Instead, Hager's conversations dealt with Hager's personal opinions regarding her discipline, Noyes' management style, and other subjects of interests only to Hager." [ALJD at 23:1-4.]

IV. ANALYSIS

1. Hager's comments to Redman were not concerted activity.

In *Meyers I* and *II*, the Board discussed the meaning of the statutory phrase "concerted activity" and established the standard that controls whether an employee, such as Hager in this case, has engaged in concerted activity. In *Meyers I*, the Board overruled *Alleluia Cushion Co.*, 221 NLRB 999 (1975), and its progeny, where the Board had adopted a "per se standard of concerted activity" under which activity, though undertaken by a single employee, was deemed concerted if it involved "an issue about which employees ought to have a group concern." *Meyers I*, 268 NLRB at 495-496. The Board rejected this "per se standard of concerted activity" as being "at odds with the Act" because it "artificially presume[d]" that "what ought to be of group concern . . . is of group concern." *Id.* at 496. Instead, the Board in *Meyers I* held that "to find an employee's activity to be 'concerted,' we shall require that it be engaged in with or on

the authority of other employees, and not solely by and on behalf of the employee himself." Id. at 497 (emphasis added). The Board emphasized that "the question of whether an employee engaged in concerted activity is, at heart, a factual one, the fate of a particular case rising or falling on the record evidence." Id. (emphasis added).

In *Meyers II*, the Board responded to several questions posed by the D.C. Circuit, including whether the *Meyers* standard "would protect an individual's efforts to induce group action." The Board in *Meyers II* explained that a single employee's efforts to "induce group action" would be deemed concerted activity, based on "the view of concertedness exemplified by the *Mushroom Transportation* line of cases," which the Board in *Meyers II* ""fully embraced." *Meyers II*, 281 NLRB at 887. In *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964), the court held that "a conversation may constitute a concerted activity although it involves only a speaker and a listener, but to qualify as such, it must appear at the very least it was engaged in with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of employees." The court added that "[a]ctivity which consists of mere talk must, in order to be protected, be talk looking toward group action. . . . [I]f it looks forward to no action at all, it is more than likely to be mere "griping."' *Id*.[4]

Applying the *Meyers* standard here, the evidence shows that Hager's discussions with Redman did not involve concerted activity. Hager's conversations with Redman did not mention any sort of group concern or action. Hager did not seek the assistance of Redman, or anyone else, in addressing her concerns about her discipline, Noyes' management style, or the other issues that she discussed with Redman. Her statements to Redman involved only her own discipline and opinions. Hager herself testified that she only gave Redman a "rundown" of her "personal account of what happened" when she was demoted. [ALJD at 13:4-9, fn 29.] There

[4] The Board in *Meyers II* also held concerted the activity of "individual employees brining truly group complaints to the attention of management." 281 NLRB at 887. Such activity, although individual in its culmination, is typically preceded by group activity and thus "ha[s] some relation to group action in the interest of employees." *Mushroom Transportation*, 330 F.2d at 685.

is no evidence that in providing her personal account to Redman that Hager sought to induce him to take any sort of action regarding her demotion or anything else. Thus, the ALJ correctly held that Hager did not engage in concerted activity.

The General Counsel's argument that *Inova Health System* requires a finding that Hager's comments to Redman were inherently concerted is not supported by any authority and was specifically rejected by the ALJ. The ALJ explained that "[n]owhere in *Inova Health System* does it state that employees have a protected concerted right to discuss discipline with other employees… While such discussions are protected, there is no authority for the proposition that they are automatically deemed concerted without going through the analysis elucidated in *Fresh & Easy Neighborhood Market*." [ALJD at 21:1-10.]

In addition, the General Counsel's argument that conversations about individual discipline and opinions about management are inherently concerted is irreconcilable with *Meyers and Fresh & Easy Neighborhood Market*. In *Meyers*, as noted above, the Board "fully embrac[ed] the view of concertedness exemplified by the *Mushroom Transportation* line of cases," 281 NLRB at 887, and in *Mushroom Transportation* the court held that a conversation qualifies as concerted activity only if "it . . . appear[s] at the very least it was engaged in with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of the employees." *Id*. (internal quotations omitted). *There is no wiggle room in this language*. It does not allow for the possibility of "inherently concerted" activity where there is no evidence of an object of initiating, inducing, or preparing for group action or some relation to group action. Moreover, *Meyers* draws a distinction between conversations that look toward group action and "mere griping." *Id*.

Similarly, *Fresh & Easy Neighborhood Market* holds that whether a soliciting employee's activity is concerted depends on the manner in which the employee's actions may be linked to those of his coworkers. 361 NLRB No. 12, slip op. at 3. The legal tests for concerted activity under *Myers* and *Fresh & Easy Neighborhood Market* are erased by the General Counsel's position, which sweeps within the phrase "inherently concerted" all conversations

regarding individual discipline and personal opinions about management, even if there is no group-action object and the conversation involves "mere griping." The General Counsel's argument contradicts *Meyers*' insistence that "the question of whether an employee engaged in concerted activity is, at heart, a factual one, the fate of a particular case rising or falling on the record evidence." *Meyers I*, 268 NLRB at 497. Clearly, the Board does not contemplate a factual inquiry that would begin and end with the subject of the conversation. Yet under the General Counsel's argument, the fate of a particular case rises or falls on the Board's decision, as a matter of law, that the subject discussed (in this case individual discipline and personal opinions) is likely to spawn collective action. *Meyers* and *Fresh & Easy Neighborhood Market* dictate otherwise.

In short, the "inherently concerted" theory asserted by the General Counsel cannot be reconciled with *Meyers Industries or Fresh & Easy Neighborhood Market*. The standard set forth in *Meyers* remains the applicable test for determining when activity that "in its inception involves only a speaker and a listener" constitutes concerted activity. 281 NLRB at 887 (quoting *Root-Carlin, Inc.*, 92 NLRB 1313, 1314 (1951)). Under that standard, "'it must appear at the very least"' that such activity "'was engaged in with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of the employees." *Id*. (quoting *Mushroom Transportation*, 330 F.2d at 685). No such object may be reasonably inferred from Hager's exchanges with Redman, which warrants a finding that Hager did not engage in concerted activity.

2. Hager's comments to Redman were not for the "purpose" of "mutual aid or protection."

As noted above, a separate prerequisite for Section 7 protection is that concerted activity be conducted for the "purpose" of "collective bargaining or other mutual aid or protection." The General Counsel asserts that Hager's comments to Redman are protected by Section 7 solely on the basis of the assertion that the comments were "inherently concerted." However, even if Hager's comments could be deemed concerted, there is no evidence that the comments had the

"purpose" of fostering "collective bargaining or other mutual aid or protection." This independently warrants a finding that Hager's comments were unprotected under Section 7, making Hager's discharge lawful under Section 8(a)(1) of the Act.

Nothing about Hager's comments to Redman suggests that either employee had a purpose that involved mutual aid or protection. There was no communication by Hager that Redman's job was in danger. Hager did not even relay that her own job was in danger. Similarly, Hager's conversations with Redman did not involve topics that inure to the benefit of all employees, such as safety, non-discriminatory hiring practices, or the protection of another employee's job. Instead, Hager's comments dealt with her personal opinions regarding her discipline, Noyes' management style, and other subjects of interest only to Hager.[5] As Hager testified, she "gave a personal account of what happened" to Redman. [Tr. at 866.]

Hager's comments to Redman cannot be considered to have the purpose of mutual aid or protection even under *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12 (2014), where a Board majority expansively interpreted Section 7's "mutual aid or protection" clause. In *Fresh & Easy Neighborhood Market*, a single employee was found to have a purpose of mutual aid or protection when she sought to have two coworkers sign a piece of paper (reproducing an obscene message scrawled on a whiteboard) relating to her individual complaint. In reliance on a "solidarity principle," the Board majority reasoned that a purpose of mutual aid or protection could be inferred because the employee was "soliciting assistance from coworkers." *Id.*, slip op. at 6 (internal quotation omitted).

Here, the General Counsel argues that the Board should dispense even with the requirement that an employee acting to benefit himself or herself at least solicit assistance from a

[5] The General Counsel's claim that the ALJ's analysis omitted Hager's comments about Noyes' management style is not correct. The ALJ specifically addressed those comments stating: "Hager's conversations dealt with Hager's personal opinions regarding her discipline, ***Noyes' management style*** and other subjects of interest only to Hager. As such, I do not find that Hager engaged in conduct for the purpose of mutual aid or protection by repeatedly discussing her opinions with Redman." [ALJD at 13:4-9, fn 29.] (emphasis added).

coworker. Hager did not ask Redman to do anything, let alone to do something for Hager. The solidarity principle finds no foothold on these facts. Thus, even applying *Fresh & Easy*--which constitutes the outermost limit of "mutual aid or protection" within the meaning of Section 7--the absence of any solicitation of assistance means there was no purpose of mutual aid or protection, which again warrants a conclusion that Hager did not engage in protected activity when she made her comments to Redman.

3. Hager's misconduct that was uncovered after her discharge disqualifies her for reinstatement and full back pay.

Following Hager's termination, KRMC learned that she had committed significant misconduct during her employment that would have warranted her discharge.[6] The Board has consistently held that a charging party forfeits her right to reinstatement and full back pay where an employer learns, following the party's discharge, of misconduct during her employment that that would have warranted her discharge. *See Frontier Tele. Of Rochester, Inc.*, 344 NLRB 1270, 1277 (2005) (reasoning Charging Party forfeits his right to reinstatement and full back pay where an employer learns, following the Charging Party's discharge, he committed misconduct during his employment warranting discharge); *In re Aldworth Co., Inc.*, 338 NLRB 137, 147 (2002) (refusing to order reinstatement and full back pay where Charging Party committed conduct warranting lawful discharge unknown to the employer at the time of discharge).

Here, the overwhelming evidence shows that shortly after Hager was discharged, KRMC learned that Hager failed to obtain the necessary licenses for a self-referred mammogram program that she oversaw at the Imaging Center. The evidence shows that Hager never submitted the required paperwork and/or license application to allow KRMC to become certified to perform self-referred mammograms. [Tr. at 949:2-973:2.] The evidence also shows that it

[6] The ALJ drew an "inference" that KRMC knew or should have known that self-referred mammograms were being performed at the imaging center at the time of Hager's termination. [ALJD at 16: fn. 38.] KRMC does not contest the ALJ's statement. However, the ALJ did not make any findings as to whether KRMC was aware that Hager failed to obtain the proper licenses needed to operate the self-referred mammogram program.

was Hager's responsibility as the Imaging Center Supervisor to ensure that all the necessary policies and licenses were in place to allow KRMC to perform self-referred mammograms. [Tr. at 937:15-939:13; 971:2-6; R. Ex. 23.] Not only did Hager fail to implement the necessary policies and procedures, she misled KRMC into believing that she had taken the steps necessary to obtain the proper authorization for KRMC to perform self-referred mammograms. Specifically, in June 2013, Hager sent an email to Campbell and other KRMC management staff explaining the guidelines for handling self-referred mammograms. [Tr. at 967:20-970:16.]

As a direct result of Hager's actions, KRMC was required to shut down its mammogram screening for approximately a day-and-a-half and was assessed a $2,000 penalty by the State of Arizona. [Tr. at 972:11-975:8.] Additionally, Hager's actions risked patient safety and exposed KRMC and employees who performed self-referred mammograms pursuant to Hager's authorization, to having their professional license revoked by the State of Arizona. [Tr. at 972:11-973:2.] Campbell testified that KRMC would have terminated Hager's employment if the issues related to the self-referred mammogram program that Hager implemented would have been known to KRMC while she was still employed. [Tr. at 975:1-8.].

Accordingly, to the extent that the ALJ decides that Hager was unlawfully discharged, her misconduct disqualifies her from being eligible for reinstatement and she would forfeit her right to full back pay.

V. CONCLUSION

The ALJ here correctly found that there was no evidence that Hager's comments to Redman were concerted or for the mutual aid or protection of other employees. According, the ALJ's finding that Hager's discharge did not violate Section 8(a)(1) of the Act should be upheld.

DATED this 8th day of May 2015.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of RESPONDENT'S ANSWERING BRIEF IN RESPONSE TO COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION, 28-CA-119729 was served by E-Gov, E-Filing, and E-Mail on this 8th day of May, 2015, on the following:

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